

Draft

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Norway's Bucketloads of Extinguishment¹

by PETER JULL

Norway is deservedly considered a leader, even *the* leader, in promotion and respect of human rights internationally. This does not protect it from its own dilemmas, of course. In August 2003 the Committee on the Elimination of Racial Discrimination of the United Nations found in its observations on Norway:

'19. The Committee is concerned that the recently proposed Finnmark Act will significantly restrict the control and decision-making powers of the Saami population over the right to own and use land and natural resources in the Finnmark County. The Committee draws the attention of the State Party to its General Recommendation XXIII on the rights of indigenous peoples which, inter alia, calls upon the State Party to recognize and protect the right of indigenous peoples to own, develop, control and use their communal lands, territories and resources.'

'The Committee recommends that the State Party find an adequate solution concerning the control and decision-making powers over the right to land and natural resources in the Finnmark County in agreement with the Saami people.'

Finnmark, or 'Lapp-land', is the large district lying east-west along Norway's Arctic coast. Inland are the high reindeer tundras of dwarf birch which form a large Sami heartland cross-cut by the national boundaries of Sweden, Finland, and Russia. Rushing salmon rivers and reindeer passes reach northwards to the fjords and rich Barents Sea fisheries of the Arctic coast. In the north-east is the great Varanger Fjord, while the Tana River today defines a national boundary but also centres a distinct Sami 'river' culture. (*Sami* is variously transliterated *Sámi*, *Saami*, *Same*.)

Like northern territories in Australia or Canada, or Alaska and Siberia, Finnmark has an iconic status amid the wider Sami north, *Sápmi*, of Norway and adjoining countries. If Sami do not have clear and unique rights there, if they lack cultural security and recognition as a political community (or communities) here, what hope do they have anywhere?

Crown title is murky in Finnmark, and a rush of official activity in 1980s and 1990s to provide paper title for its territory and resources has left sceptics even more sceptical of Crown assertions. The 1990s reports of a Sami Rights Committee, now derided by many as a 'Sami extinguishment committee', essentially mounted the case rejected in *Mabo*, *Wik*, Canadian, New Zealand, and American native title cases, i.e., that the existence of our governments displaced and replaced all other rights.

¹ In 1997-98 the Howard government in Australia promised 'bucketloads of extinguishment', i.e., legal extinguishment of Aboriginal land title, to protect whites after the *Wik* court decision.

The obsession with definition, formalisation, and control which is so much the Nordic official temperament always works against the fluid art and culture of an oral hunter-gather tradition, not to mention an extensive mobile activity like reindeer herding. As herders have found, the ‘assistance’ of government recognition is a double-edged sword. The pragmatic and opportunistic mix of fjord fishing, very small-scale farming, and gathering in coastal Sami settings also defies precision. Sami culture (and protest) is flourishing in many forms with the help of electronic and computer media, as well as world travel. But how can Sami survive the ‘progress’ brought by engineers, administrators, and economists of the wider national and international order crowding in on their last territories? These seem ‘large’ to Europeans, but are small by New World standards.

Sami rights recognition has been a careful process since the Alta River case brought down one prime minister and caused national and international uproar in 1979-81. The draft Finnmark Act simply ignores the ongoing consultation and study process of nearly 25 years, one in which the Sami have been patient and restrained in deference to the expected intelligent and decent machinations of the Norwegian state. The Act envisions the north as a resource hinterland open to all comers and no special respect for Sami who feel, and indeed *are*, betrayed. (The Sami Parliament website www.samediggi.no now contains material gathered for the ILO, translations of the relevant documents, and other background in English.)

Justice state secretary Jørn Holme added a gem to the global litany of *terra nullius* trash talk when he said the Act would ‘*stress that Finnmark, and especially inner Finnmark with its fantastic natural resources, is for everyone. With this bill we have given everyone in Finnmark special rights.*’ Inner Finnmark is the Sami reindeer herding and population heartland, a large part of Europe’s last ‘wilderness’. One might similarly turn Paris over to Disney for a theme park so everyone could enjoy French culture. The Justice minister, Odd Einar Dørum, boasted that ‘*We have chosen to present a totally new model of our own, not based on any of the previous suggestions.*’ Unfortunately the Justice ministry role requires formal consultation with Sami authorities and conformity with the national Constitution and international law (notably ILO 169) in this matter.

Former longtime Sami leader Ole Henrik Magga, who heads the new UN Permanent Forum on Indigenous Issues, says the government has ‘spit in the face’ of Sami and undone 25 years’ work. Sven Roald Nystø, President of the Sami Parliament in Norway, notes that the UN rarely expresses itself so explicitly as the CERD committee has done in this matter. These two are widely known and respected around the world for decades of service to human rights. The Bondevik cabinet should pay attention.

That occasional Nordic quality, smugness, and good old Norwegian stubbornness, must not prevent a sensible look at the practices and insights of northern territory experience of politics, law, and development in North America, Eurasia, and Australia. That experience is known to Sami and many others in Norway thanks to exchange visits, books, and articles. In power earlier, Prime Minister Bondevik showed promise on Sami issues, but his current team are out of their depth.

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